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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIF.  
OAKLAND, CALIF. CA

GOLDBERG, STINNETT, MEYERS & DAVIS  
A Professional Corporation  
KATHERINE D. RAY, ESQ. (CA BAR NO. 121002)  
44 Montgomery Street, Suite 2900  
San Francisco, CA 94104  
Telephone: (415) 362-5045  
Facsimile: (415) 362-2392

BAKER BOTTS LLP  
STEVEN L. LEIFER, ESQ. (admitted *pro hac vice*)  
JOSHUA B. FRANK, ESQ. (*pro hac vice* application pending)  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2400  
Telephone: (202) 639-7723  
Facsimile: (202) 585-1040

Attorneys for Plaintiff,  
HEXCEL CORPORATION, Reorganized Debtor

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re

HEXCEL CORPORATION,  
a Delaware corporation,

Reorganized Debtor.

Case No. 93-48535 T

Chapter 11

04 4246

HEXCEL CORPORATION,  
a Delaware corporation,

Plaintiff,

vs.

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Defendants.

Adversary Proceeding No.

**COMPLAINT TO DETERMINE DISCHARGE OF CLAIMS,  
FOR DECLARATORY RELIEF, AND FOR INJUNCTIVE RELIEF**

1       HEXCEL CORPORATION, a Delaware corporation and the reorganized debtor herein  
2 ("Hexcel"), files this complaint for a determination that alleged prepetition claims of the defendants  
3 named herein have been discharged in Hexcel's bankruptcy case and to permanently enjoin said  
4 defendants, and each of them, from any act to collect, recover or offset any claim against Hexcel or  
5 its property which arose prior to the entry of the order confirming Hexcel's chapter 11 plan of  
6 reorganization, and alleges as follows:

7                   **JURISDICTIONAL, VENUE AND CORE STATUS ALLEGATIONS**

8       1.       This adversary proceeding is brought pursuant to Rule 7001 of the Federal Rules of  
9 Bankruptcy Procedure and Sections 524 and 1141 of the Bankruptcy Code.

10       2.       The above-entitled Court has subject matter jurisdiction to hear this adversary  
11 proceeding pursuant to the provisions of 28 U.S.C. Sections 1334(b) and 157(a).

12       3.       This adversary proceeding is a core proceeding under 28 U.S.C. Section 157(b)(2)(A)  
13 and (K).

14       4.       Venue for this adversary proceeding is properly before the above-entitled Bankruptcy  
15 Court pursuant to the provisions of 28 U.S.C. Section 1409(a).

16       5.       Defendant New Jersey Department of Environmental Protection ("NJDEP") is a  
17 department of the State of New Jersey responsible for environmental protection and enforcement.

18       6.       Defendant United States Environmental Protection Agency ("USEPA") is a federal  
19 agency responsible for environmental protection of the United States. Region 2 of the USEPA is a  
20 regional office of the USEPA responsible for areas within the state of New Jersey.

21                   **GENERAL ALLEGATIONS**

22       7.       On December 6, 1993, Hexcel filed a voluntary petition for relief under the provisions  
23 of chapter 11 of the United States Bankruptcy Code.

24       8.       On or about February 25, 1994, Hexcel, through Poorman-Douglas Corporation, the  
25 duly-appointed noticing agent in Hexcel's chapter 11 case (the "Noticing Agent"), served all known  
26 creditors of Hexcel and other interested parties with a Notice Of Commencement Of Case Under  
27 Chapter 11 Of The Bankruptcy Code And Meeting Of Creditors (the "Commencement Notice"),  
28 including the NJDEP, then known as the New Jersey Department of Environmental Protection and

1 Energy, and the USEPA, including without limitation, Region 2 of the USEPA.

2 9. Pursuant to an order of the Bankruptcy Court dated March 4, 1994, the Court  
3 established April 28, 1994 (the "Bar Date") as the last date for filing proofs of claim in Hexcel's  
4 chapter 11 case. Pursuant to the Bar Date order and Rules 3002 and 3003 of the Federal Rules of  
5 Bankruptcy Procedure, all persons or entities, including without limitation, individuals, partnerships,  
6 corporations, estates, trusts, unions and governmental units holding or wishing to assert claims  
7 against Hexcel, were required to file a separate, complete and executed proof of claim with the  
8 Bankruptcy Court by April 28, 1994.

9 10. On or about March 7, 1994, Hexcel, through the Noticing Agent, served all known  
10 creditors of Hexcel and other interested parties, including the NJDEP, the USEPA, including without  
11 limitation Region 2 of the USEPA, with notice of the Bar Date (the "Bar Date Notice") by first class  
12 United States mail.

13 11. At the time of the Petition Date, Hexcel was the subject of an administrative consent  
14 order (the "ACO") issued by the NJDEP regarding cleanup of a chemical plant located at 205 Main  
15 Street, Lodi, New Jersey (the "Lodi Site") formerly owned by Hexcel and sold to Fine Organics  
16 Corporation ("FOC") prior to the Petition Date.

17 12. In connection with Hexcel's chapter 11 case, Hexcel entered into a settlement  
18 agreement with FOC in 1997, which was approved by this Court, pursuant to which Hexcel  
19 reacquired the Lodi Site, leased same to FOC, and agreed to comply with the provisions of the  
20 Industrial Site Recovery Act N.J.S.A. ("ISRA") with regard to the Lodi Site and the ACO, and to  
21 continue to post the requisite financial assurances with the NJDEP and in accordance with the ACO.

22 13. No proof of claim was filed by the NJDEP regarding the Lodi Site or the ACO.

23 14. At no time has Hexcel operated the Lodi Site subsequent to the prepetition sale of the  
24 Lodi Site by Hexcel to FOC.

25 15. On April 20, 1994, the Attorney General of New Jersey filed a proof of claim in  
26 Hexcel's chapter 11 case, Claim No. 848, on behalf of the New Jersey Department of Environmental  
27 Protection and Energy, for (1) cleanup and removal costs incurred, or to be incurred, by the NJDEP  
28 under the New Jersey Spill Act and other unspecified federal and state statutes "concerning a number

1 of sites, including but not limited to: the Chemical Control Site in the City of Elizabeth, Union  
2 County, State of New Jersey, Helen Kramer Landfill Site in Gloucester County, State of New Jersey  
3 (the 'Sites')," (2) all cleanup and removal costs incurred by the NJDEP in connection with the Sites,  
4 including costs of response actions and natural resource damage claims to be undertaken after  
5 confirmation of any plan in Hexcel's bankruptcy case, and (3) other claims.

6 16. On August 2, 1994, Hexcel and the NJDEP entered into a Stipulation under which,  
7 among other things, Claim No. 848 was deemed amended to assert claims only for Hexcel's equitable  
8 share of cleanup costs at the Helen Kramer Landfill, Chemical Control Site, A to Z Landfill, and any  
9 other New Jersey sites that were the subject of claims asserted by the NJDEP.

10 17. On or about April 28, 1994, USEPA for Region 9 filed a proof of claim, Claim No.  
11 1124, regarding an environmental site commonly known as Puente Valley, located in California.

12 *admitted* 18. No proof of claim was filed by the USEPA for Region 2 of the USEPA regarding any  
13 site located in the State of New Jersey.

14 19. On January 12, 1995, the Order Confirming The First Amended Plan Of  
15 Reorganization Proposed By The Debtor And The Official Committee Of Equity Security Holders  
16 (the "Confirmation Order") was entered by the Bankruptcy Court.

17 20. Pursuant to the Confirmation Order, The First Amended Plan Of Reorganization  
18 Proposed By The Debtor And The Official Committee Of Equity Security Holders, Dated As Of  
19 November 7, 1994 (the "Plan") was confirmed, with modifications. The Plan became effective on  
20 February 9, 1995.

21 21. Under the Plan, Environmental Claims are defined as "any Claim, notice of violation,  
22 action, lien, demand, abatement or other order or direction (conditional or otherwise) by any  
23 governmental body or any entity for personal injury (including sickness, disease or death) tangible or  
24 intangible property damage, money damages, damage to the environment, nuisance, pollution,  
25 contamination or other adverse effects on the environment, or for fines, penalties or restrictions  
26 resulting from or based upon (a) existence, or the continuation of the existence, of an Environmental  
27 Release (including, without limitation, sudden or non-sudden accidental or non-accidental  
28 Environmental Releases), or exposure to any Hazardous Material or other substance, chemical,

1 material, pollutant, contaminant, odor, or audible noise at, in, by, from or related to the properties  
2 presently or formerly owned, leased or operated by Hexcel or any activities conducted thereon; (b)  
3 the environmental aspects of the transportation, storage, treatment or disposal of Hazardous Materials  
4 in connection with the operation of the properties presently or formerly owned, leased or operated by  
5 Hexcel; or (c) the violation, of any Environmental Laws, orders or permits of or from any  
6 governmental body relating to environmental matters connected with the properties presently or  
7 formerly owned, leased or operated by Hexcel.

8 22. Under Section 4.7 of the Plan, Environmental Claims were classified as Class 7  
9 Claims. Under Section 4.7 of the Plan, Class 7 Claims were discharged unless allowed pursuant to a  
10 Final Order, such that only Allowed Environmental Claims were reinstated and passed through  
11 without being discharged, subject to all defenses available to Hexcel under nonbankruptcy law.

12 23. Pursuant to Section 9.2 of the Plan, Paragraph 27 of the Confirmation Order, and  
13 Sections 524 and 1141(d) of the Bankruptcy Code, Hexcel was discharged from any and all debts and  
14 claims that arose before date of entry of the Confirmation Order except to the extent provided for  
15 under the Plan, and furthermore, the commencement or continuation of any action, the employment  
16 of any process, or any act to collect, recover or offset any debt discharged as a personal liability of  
17 Hexcel or its estate, or from or against property of Hexcel or its estate, was permanently enjoined.

18 24. On or about September 14, 2003, the NJDEP issued its Natural Resource Injury  
19 Assessment Directive (the "NJDEP Directive"). The NJDEP Directive, among other things,  
20 identifies approximately 18 sites, including the Lodi Site, which the NJDEP contends may have  
21 contributed to the contamination of the Lower Passaic River in New Jersey. Under the NJDEP  
22 Directive, Hexcel and FOC have been identified as persons responsible for the discharge of  
23 hazardous substances at the Lodi Site which may have emanated to the Lower Passaic River.

24 25. About the same time as the issuance of the DEP Directive, the USEPA sent a General  
25 Notice of Potential Liability under the Comprehensive Environmental Response, Compensation, and  
26 Liability Act ("CERCLA") to approximately 41 companies, including Hexcel, seeking contribution to  
27 the USEPA's cost for conducting a remedial investigation and feasibility study of natural resource  
28 damages in the Lower Passaic River.

**FIRST CLAIM FOR RELIEF**  
**(Discharge Of Claims of Defendant NJDEP – 11 U.S.C. § 1141)**

26. Hexcel realleges and incorporates the allegations of paragraphs 1 through 24 as though set forth in full herein.

27. The NJDEP's claims against Hexcel for possible contamination of the Lower Passaic River arises from Hexcel's operation of the Lodi Site prior to the Petition Date and were not included in NJDEP Claim No. 848, as modified by the August 2, 1994 Stipulation.

28. Pursuant to Section 1141(d)(1)(A) of the Bankruptcy Code, confirmation of the Plan discharged Hexcel from any debt, which is a liability on a claim, that arose before the date of such confirmation whether or not a proof of claim based on such debt was filed or deemed filed, or the holder of such claim accepted the Plan, except to the extent such claim was Allowed.

29. As such, the claim against Hexcel which is set forth in the NJDEP Directive was not an Allowed Environmental Claim under the Plan and represents a contingent, unliquidated and disputed claim pursuant to Section 101(5) of the Bankruptcy Code which was discharged

30. Any obligation allegedly owed the NJDEP by Hexcel for natural resource damages to the Lower Passaic River was discharged pursuant to Section 1141(d)(1)(A) of the Bankruptcy Code, the Plan and Confirmation Order.

31. Pursuant to Section 524 of the Bankruptcy Code and the Confirmation Order, the NJDEP is permanently enjoined from collecting or taking any action to collect, the alleged debt to NJDEP by Hexcel as set forth in the DEP Directive.

**SECOND CLAIM FOR RELIEF**  
**(Discharge Of Claims of Defendant USEPA – 11 U.S.C. § 1141)**

32. Hexcel realleges and incorporates the allegations of paragraphs 1 through 24 of this Complaint as though set forth in full herein.

33. The USEPA's claims against Hexcel for possible contamination of the Lower Passaic River arises from Hexcel's operation of the Lodi Site prior to the Petition Date.

34. As such, the claim against Hexcel which is set forth in the USEPA's CERCLA Notice represents a contingent, unliquidated and disputed claim pursuant to Section 101(5) of the

1 Bankruptcy Code.

2 35. Pursuant to Section 1141(d)(1)(A) of the Bankruptcy Code, confirmation of the Plan  
3 discharged Hexcel from any debt, which is a liability on a claim, that arose before the date of such  
4 confirmation whether or not a proof of claim based on such debt was filed or deemed filed, or the  
5 holder of such claim accepted the Plan, except to the extent such claim was Allowed.

6 36. Any obligation allegedly owed to the USEPA by Hexcel for natural resource damages  
7 to the Lower Passaic River, including contribution to the USEPA's cost for conducting a remedial  
8 investigation and feasibility study of natural resource damages in the Lower Passaic River, was  
9 discharged pursuant to Section 1141(d)(1)(A) of the Bankruptcy Code, the Plan and Confirmation  
10 Order.

11 37. Pursuant to Section 524 of the Bankruptcy Code and the Confirmation Order, the  
12 USEPA is permanently enjoined from collecting or taking any action to collect, the alleged debt to  
13 the USEPA by Hexcel as set forth in the USEPA CERCLA Notice.

14 **THIRD CLAIM FOR RELIEF**  
15 **(Declaratory Relief - As Against All Defendants)**

16 38. Hexcel realleges and incorporates the allegations of paragraphs 1 through 24 of this  
17 Complaint as though fully set forth herein.

18 39. An actual controversy has arisen and now exists between Hexcel, on the one hand, and  
19 the NJDEP and USEPA, on the other hand. Hexcel contends that because the NJDEP's and  
20 USEPA's claims for contribution, reimbursement and damages arising from Hexcel's prepetition  
21 operation of the Lodi Site, as set forth in the NJDEP Directive and USEPA CERCLA Notice,  
22 respectively, arose prior to the Confirmation Order, any debts owed to the NJDEP and/or USEPA by  
23 Hexcel pursuant to said claims have been discharged pursuant to Section 1141 of the Bankruptcy  
24 Code and the Confirmation Order, and that the NJDEP and USEPA are permanently enjoined, stayed  
25 and restrained from the commencement or continuation of any action, the employment of any  
26 process, or any act to collect, recover or offset any debt discharged thereunder as a personal liability  
27 of the estate of Hexcel, or from or against property of the estate or Hexcel. Hexcel is informed and  
28 believes, and on that basis alleges, that defendants, and each of them, dispute these contentions.

1 40. A judicial declaration setting forth the dischargeability of the claims set forth in the  
2 NJDEP's Directive and the USEPA's CERCLA Notice pursuant to Section 1141 of the Bankruptcy  
3 Code and the Confirmation Order is necessary to resolve these controversies.

4  
5 **FOURTH CLAIM FOR RELIEF**

6 **(Preliminary And Permanent Injunctions As Against All Defendants)**

7 41. Hexcel realleges and incorporates the allegations of paragraphs 1 through 24 of this  
8 Complaint as if fully set forth herein.

9 42. Defendants' claims for contribution and/or damages as set forth in the NJDEP  
10 Directive and USEPA CERCLA Notice were discharged, and by issuing the NJDEP Directive and  
11 USEPA CERCLA Notice, seeking enforcement thereof, and demanding payment of amounts based  
12 on such discharged claims, Defendants and each of them violated the permanent injunction  
13 precluding commencement or continuation of any action, the employment of any process, or any act  
14 to collect, recover or offset any debt discharged as a personal liability of Hexcel or its estate, or from  
15 or against property of Hexcel or its estate, as set forth in Paragraph 33 of the Confirmation Order,  
16 Section 9.2 of the Plan, and Sections 524 and 1141 of the Bankruptcy Code.

17 43. Defendants' respective issuance of the NJDEP Directive and USEPA CERCLA  
18 Notice, and threatened action to enforce same as against Hexcel has caused, and will continue to  
19 cause, Hexcel irreparable harm, entitling Hexcel to a preliminary and permanent injunction to enjoin  
20 the Defendants and each of them from (a) taking any action against Hexcel or its property in any  
21 legal or administrative proceedings within the State of New Jersey or elsewhere for alleged  
22 contamination of the Lower Passaic River, and (b) commencing or continuing any action against  
23 Hexcel, the employment of any process, or any act to collect, recover or offset any claim against  
24 Hexcel or its property which arose prior to entry of the Confirmation Order.

25 ///

26 ///

27 ///

28 ///



PRAYER FOR RELIEF

WHEREFORE, Hexcel prays for judgment as follows:

1. For a judicial declaration and judgment which (a) provides that the claims of the NJDEP as set forth in the NJDEP Directive have been forever discharged under the Bankruptcy Code, (b) directs the NJDEP to remove or dismiss Hexcel from the NJDEP Directive or any proceeding initiated by the NJDEP to enforce the NJDEP Directive, with prejudice, and (c) declares that the NJDEP is permanently enjoined, stayed and restrained from the commencement or continuation of any action, the employment of any process, or any act to collect, recover or offset any debt discharged hereunder as a personal liability of the estate or Hexcel, or from or against property of the estate or Hexcel, including those claims against Hexcel set forth in the NJDEP Directive;

2. For a judicial declaration and judgment which (a) provides that the claims of the USEPA as set forth in the USEPA CERCLA Notice have been forever discharged under the Bankruptcy Code, (b) directs the USEPA to remove or dismiss Hexcel from the CERCLA Notice or any proceeding initiated by the USEPA to enforce the CERCLA Notice, with prejudice, and (c) declares that the USEPA is permanently enjoined, stayed and restrained from the commencement or continuation of any action, the employment of any process, or any act to collect, recover or offset any debt discharged hereunder as a personal liability of the estate or Hexcel, or from or against property of the estate or Hexcel, including those claims against Hexcel set forth in the USEPA CERCLA Notice;

3. For issuance of preliminary and permanent injunctions enjoining defendants NJDEP and USEPA, and each of them, from (a) taking any action against Hexcel or its property in any legal or administrative proceeding in the State of New Jersey or elsewhere seeking monetary or other relief based on Hexcel's operation of the Lodi Site, and (b) commencing or continuing any action, employment of process, or any act to collect, recover or offset any claim against Hexcel or its property arising prior to the entry of the Confirmation Order, including any and all claims against Hexcel based on Hexcel's operation of the Lodi Site prior to the Petition Date;

4. For reasonable attorneys' fees to the extent allowed by law, and costs of suit incurred herein; and

1           5.       For such other and further relief as the Court may deem proper.

2 Dated: July 30, 2004

3                   BAKER BOTTS LLP

4                   and

5                   GOLDBERG, STINNETT, MEYERS & DAVIS  
6                   A Professional Corporation

7  
8 By: 

Katherine D. Ray, CA Bar #121002  
Attorneys for Plaintiff,  
Hexcel Corporation, the Reorganized Debtor

# UNITED STATES BANKRUPTCY COURT

In re  
HEXCEL CORPORATION, a Delaware corporation,  
Reorganized Debtor

Case No. 93-48535 T

Hexcel Corporation,  
Plaintiff,

04 4246

vs.  
New Jersey Department of Environmental Protection;  
United States Environmental Protection Agency,  
Defendants.

A.P. No.

## SUMMONS AND NOTICE OF STATUS CONFERENCE IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days.

Address of Clerk  
United States Bankruptcy Court  
Oakland Division  
1300 Clay Street, Suite 300  
P.O. Box 2070  
Oakland, CA 94604

At the same time, you must also serve a copy of the motion or answer upon the Plaintiff's attorney.

### Name and Address of Plaintiff's Attorneys

GOLDBERG, STINNETT, MEYERS & DAVIS  
A Professional Corporation  
Katherine D. Ray, Esq., 121002  
44 Montgomery Street, Suite 2900  
San Francisco, CA 94104  
Telephone: (415) 362-5045  
Facsimile: (415) 362-2392

BAKER BOTTS LLP  
STEVEN L. LEIFER, ESQ.  
JOSHUA B. FRANK, ESQ.  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2400  
Telephone: (202) 639-7723  
Facsimile: (202) 585-1040

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012.

YOU ARE NOTIFIED that a status conference of the proceeding commenced by the filing of the complaint will be held at the following time and place.

Address United States Bankruptcy Court Oakland Division 1300 Clay Street, Suite 300 2nd Floor P.O. Box 2070 Oakland, CA 94604	Room 201 Date and Time 9/23/04 @ 11Am
--	--

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT. PLAINTIFF SHALL PROMPTLY SERVE A COPY OF THE BANKRUPTCY DISPUTE RESOLUTION PROGRAM INFORMATION SHEET ON ALL PARTIES. A COPY OF THE INFORMATION SHEET IS AVAILABLE ON THE COURT'S WEB SITE AT WWW.CANB.USCOURTS.GOV, AND AT THE CLERK'S OFFICE.

GLORIA L. FRANKLIN

AUG 02 2004

Date

By:

Clerk of the Bankruptcy Court

Deputy Clerk

## CERTIFICATE OF SERVICE

Pam Joakimson

I, \_\_\_\_\_, certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that the service of this summons, a copy of the complaint, BDRP instructions and the Order re Initial Disclosures was made 8/4/04 by:

☒ Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

SEE ATTACHED SERVICE LIST

☐ Personal Service: By leaving the process with defendant or with an officer or agent of defendant at:

☐ Residence Service: By leaving the process with the following adult at:


☐ Publication: The defendant was served as follows: [Describe briefly]

☐ State Law: The defendant was served pursuant to the laws of the State of \_\_\_\_\_ as follows:  
[Describe briefly]

Under penalty of perjury, I declare that the foregoing is true and correct.

August 4, 2004

Date

  
Signature

Print Name	Pam Joakimson	
	Goldberg, Stinnett, Meyers & Davis	
Business Address	44 Montgomery Street, Ste. 2900	
City	State	Zip
San Francisco, CA		94104

Kedari Reddy, Esq.  
Assistant Regional Counsel  
US EPA, Region 2  
290 Broadway -17th Floor  
New York, NY 10007

Alan Tenenbaum, Esq.  
US DOJ, ENRD  
PO Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

Brian Donohue, Esq.  
US DOJ, ENRD-EES  
PO Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

U.S. Attorney's Office  
Attn: Civil Process Clerk  
1301 Clay Street, Ste. 340S  
Oakland, CA 94612

U.S. Attorney's Office  
Northern District of Calif.  
Environ. & Natural Resources Unit  
450 Golden Gate Ave., 11th Flr.  
San Francisco, CA 94102

U.S. Attorney General John Ashcroft  
US Dept. of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530-0001

Joan Olawski-Stiener, Esq.  
Deputy Attorney General  
State of New Jersey  
Dept. of Law & Public Safety  
Div. of Law  
Richard J. Hughes Justice Complex  
25 Market Street  
PO Box 93  
Trenton, NJ 08625-0093

SERVICE LIST

ORIGINAL FILED

AUG 02 2004

BANKRUPTCY COURT  
OAKLAND, CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

HEXCEL CORPORATION, a Delaware  
corporation,

Reorganized Debtor. /

HEXCEL CORPORATION,

Plaintiff,

vs.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION; UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

Defendants /

No. 93-48535 T

Adv. No.

04 4246

ORDER RE INITIAL DISCLOSURES  
AND DISCOVERY CONFERENCE

The purpose of this order is: (1) to notify the parties of their obligation under Fed. R. Civ. P. 26, as incorporated by Fed. R. Bankr. P. 7026, to make Initial Disclosures and meet for a Discovery Conference; and (2) to modify those Rule 26 requirements in certain respects. As such, this order has no effect in any proceeding exempted under Rule 26(a)(1)(E) and (f) from the Initial Disclosure and Discovery Conference requirements.

Order re Initial Disclosures and  
Discovery Conference

1       **1. The Discovery Conference.** At least 21 calendar days before  
2 the status conference scheduled in the summons, the parties shall  
3 confer (in person or by telephone) at a "Discovery Conference."  
4 Plaintiff shall initiate contact regarding arrangement of the  
5 Discovery Conference. Defendant shall cooperate in fixing the time  
6 and place of the Discovery Conference. Except to the extent the  
7 parties stipulate otherwise, no party shall initiate or conduct any  
8 formal discovery prior to the Discovery Conference. The parties may  
9 conduct informal discovery.

10       **2. Settlement.** At the Discovery Conference, the parties shall  
11 consider the nature and basis of their claims and defenses and the  
12 possibility of an early settlement. The parties shall also discuss  
13 ADR options, as required by B.L.R. 9040-3.

14       **3. Initial Disclosures.** At the Discovery Conference, the  
15 parties shall arrange to make the "Initial Disclosures" required by  
16 Rule 26(a), without necessity of a formal discovery request. The  
17 Disclosures shall be made at or within 14 calendar days after the  
18 Discovery Conference. All disclosures shall be in writing, signed by  
19 the party or his or her attorney, and served on all other parties.

20       **4. Discovery Plan.** Unless:

21       (a) the proceeding is exempt under Rule 26(f);

22       (b) the proceeding seeks to recover money or property, or  
23       except a debt from discharge pursuant to 11 U.S.C. § 523(a), of  
24       no more than \$15,000, excluding interest, attorneys, fees, and  
25       costs; or

1 (c) the parties stipulate to the contrary in a writing filed  
2 with the court;  
3 the parties shall, at the Discovery Conference, also develop a  
4 written Discovery Plan signed by all parties or their counsel, that  
5 reflects the parties' views and proposals concerning:

6 (i) what changes, if any, should be made in the timing,  
7 form, or requirements of the Initial Disclosures;

8 (ii) the timing, subject matter, and limitations, if any, of  
9 discovery to be conducted after the initial disclosures; and

10 (iii) the subject of any orders that the court should enter  
11 under Fed.R.Bankr.P. 7016(b) and (c) and 7026(a)(1).

12 The Discovery Plan shall be filed within 14 calendar days after the  
13 Discovery Conference.

14 5. Pretrial Disclosures. Notwithstanding Rule 26(a)(3),  
15 pretrial disclosures shall be made in accordance with further order  
16 of the court.

17 6. Service hereof. The summons, complaint, and this order  
18 shall be served by the plaintiff within 10 days of the date of this  
19 order. A return or proof of service shall be filed within 5 days  
20 after service.

21 /////

22 /////

23 /////

24 /////

25 /////



1 SO ORDERED.

2 Dated: AUG 02 2004

3 FOR THE COURT

4 GLORIA L. FRANKLIN

5  
6 Clerk of Court

7  
8  
9 I certify that a copy of this Order was returned to the plaintiff at  
10 the time the original summons was issued.

11 Dated: AUG 02 2004

12  
13  
14 Judy Luke

15 Deputy Clerk

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**BANKRUPTCY DISPUTE RESOLUTION PROGRAM**

**INSTRUCTIONS FOR PARTIES**

The Bankruptcy Court for the Northern District of California has established an alternate dispute resolution program known as the Bankruptcy Dispute Resolution Program ("BDRP"). The rules governing the BDRP are found in the Bankruptcy Local Rules at B.L.R. 9040 et seq. The BDRP is available to parties, whether or not represented by counsel, in all controversies arising in adversary proceedings, contested matters or other disputes in a bankruptcy case with a few exceptions. The program is entirely voluntary and has a modest charge of \$100 per side. The charge is waivable in whole or part at the discretion of the Resolution Advocate who is assigned to the matter.

A matter may be referred to the BDRP by the Court with the agreement of the parties at a status conference or hearing, or the parties may submit a stipulated order requesting that the matter be referred to the BDRP. The order should recite that all parties to the dispute agree to the referral.

The following steps should be taken whether the matter is referred to the BDRP at a hearing, requested, or submitted by stipulated order.

1. The parties to the dispute are to confer and select a Resolution Advocate ("RA") and an Alternative RA from the weekly list of available panel members. This list is updated weekly, and is posted outside the courtroom or may be obtained from the court room deputy. You may also call Edward Emmons at (415) 268-2395 to check availability. Your selection of an RA and Alternate should be made only from the weekly list. A complete list of all panel members including short biographies is provided for reference in the clerk's office at the intake counter.
2. The parties should agree who is to complete the Order Appointing Resolution Advocate, and return or present 2 copies to the court for signature, together with a stamped envelope addressed to the submitting party.
3. The BDRP has been designed to be a streamlined procedure; therefore, upon receipt of the signed order, the submitting party must immediately serve a copy of the order on the RA, the Alternate, all parties to the dispute and Mr. Edward Emmons at: U.S. Bankruptcy Court, P.O. Box 7341, San Francisco, CA 94120-7341.

Once the RA receives a copy of the order, he or she will contact the parties to schedule a conference. The RA in conjunction with the parties, will determine a time, place and format for

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the conference. Possible formats are as follows:

**FACILITATION** - Facilitation is a collaborative process in which the RA functions as a neutral providing information about the process. The RA does not make substantive contributions regarding the merits of the dispute or possible settlements. A facilitator helps the parties define the issues in order to increase the likelihood that the parties will reach a consensus.

**MEDIATION** - Mediation is a flexible non-binding, confidential process in which a neutral facilitates negotiations among the parties to help them reach settlement. The mediator's goals include: improving communication across party lines, helping parties articulate their interests and understand those of their opponent, probing the strengths and weaknesses of each party's legal positions, helping identify areas of agreement and generating options for a mutually agreeable resolution to the dispute. The mediator generally does not give an overall evaluation of the case. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options often by going beyond the legal issues in the controversy.

**EARLY NEUTRAL EVALUATION** - In Early Neutral Evaluation the parties and their counsel, in a confidential session, present summaries of their cases and receive a nonbinding assessment by an experienced neutral professional with subject-matter expertise. The evaluator also helps identify areas of agreement, provides case-planning guidance and, if requested by the parties, settlement assistance.

All of the above are **non-binding, voluntary, and confidential**. Other processes and procedures may be used by agreement and at the discretion of the parties and the RA. The goal is to provide parties with the flexibility to resolve the dispute more quickly, at less cost and without the stress and pressure of litigation.

If you have any questions, please contact the BDRP Staff Administrator, Edward Emmons at (415) 268-2395.

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